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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,763	12/05/2003	Clifford D. Bennett	442005-00122	3208
7590	10/15/2007		EXAMINER [REDACTED]	SAFAVI, MICHAEL
Mark P. Levy Thompson Hine LLP P.O. Box 8801 Dayton, OH 45401-8801			ART UNIT [REDACTED]	PAPER NUMBER 3637
			MAIL DATE [REDACTED]	DELIVERY MODE PAPER
			10/15/2007	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/729,763	BENNETT, CLIFFORD D.
	Examiner	Art Unit
	M. Safavi	3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 July 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-8,10-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) 13,15-18,22 and 23 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4-8,10-12 and 19-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on Secember 05, 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>3/18/04</u>	6) <input type="checkbox"/> Other: _____

Applicant's election with traverse of the invention of Group I in the reply filed on July 02, 2007 is acknowledged. The traversal being on the grounds that amended claims 10-12 no longer satisfy the requirement for two-way distinctness. In view of the amendment presented with Applicant's response to the requirement for restriction the invention of Groups I and II will be examined together.

Claims 13, 15-18, 22, and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 02, 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-6, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Auciello et al. '271. Auciello et al. '271 discloses Figs. 1, 2, 4, 6, and 9, a void former 2, comprising an elongate tubular body having a closed inner end 6 and

an open outer end; a wall of said body defined by coextensive inner and outer surfaces; and a groove 8 formed in said wall and extending from one of said inner and outer surfaces thereof toward, but not through the other of said inner and outer surfaces; said groove configured to both rupture and permit said body to collapse inwardly in response to a force applied to said body at said open end flange thereof. A radially outwardly extending flange 12 formed at the outer end of the body can be seen in Fig. 3.

Claims 1, 5-8, 10, 12, 19, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Tolf, Jr. '336. Tolf, Jr. '336 discloses Figs. 1, 2, and 5-7, a void former 10, comprising an elongate tubular body having a closed inner end 11 and an open outer end; a wall of said body defined by coextensive inner and outer surfaces; and a groove 26 formed in said wall and extending from one of said inner and outer surfaces thereof toward, but not through the other of said inner and outer surfaces; said groove configured to both rupture and permit said body to collapse inwardly in response to a force applied to said body at said open end flange thereof. Hamrick teaches use of the void former within a plastic concrete mass, col. 2, lines 20-25, (**claim 10**). A radially outwardly extending flange 12 is formed at the outer end of the body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolf, Jr. in view of Auciello et al.

To have formed the groove 26 of the Tolf, Jr. form 10 as a spirally extending groove 12, thus serving to more effectively allow collapse of the form, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Auciello et al.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolf, Jr. in view of any of Pederson '245, Heaton '816, Hamrick '349 and Rajecki '465.

To have formed the radially outwardly extending flange 12 of the Tolf, Jr. void former 10 with a slot, thus serving to more effectively fasten the void former 10 to a concrete form, (as with Pederson '245), or to save on material, (as with Hamrick '349), or to allow for adjustment, (as with Rajecki '465 or Heaton '816), would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Pederson '245, Heaton '816, Hamrick '349 and Rajecki '465.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
September 10, 2007